

June 12, 2019

VIA FACSIMILE

Director, Office of Information Policy (OIP)
United States Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, D.C. 20530-0001

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I hereby appeal the adequacy of the search conducted regarding my request 1438298-000, regarding Lavabit.

In its June 4, 2019 response to me, the FBI did not indicate that it had searched any cross-reference files or electronic surveillance (ELSUR) files for responsive records, or that it had queried FBI field offices for potentially responsive documents, including those deemed automatically declassified per the FBI Automatic Declassification Manual issued in May 2007. Accordingly, the FBI's initial search was inadequate, and I appeal the denial on that basis.

As to any records located in investigative files for pending investigations, the FBI may not assert Exemption 7(A) without conducting a document-by-document review to determine whether release of the records would interfere with ongoing law enforcement proceedings.

The United States District Court for the District of Columbia recently "remind[ed] the FBI of its obligation to conduct record-level reviews at the administrative level before refusing to produce records contained in its investigative files." *Tipograph v. Dep't of Justice*, 83 F. Supp. 2d 234, 236 (D.D.C. Mar. 18, 2015).

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Whenever possible, please provide the requested information in electronic Portable Document Format (PDF).

Exhibit C

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my cell number is 571-215-3468.

Please provide expedited processing of this request which concerns a matter of urgency. As a Research Fellow, my job is disseminating information. My publications and multimedia appearances can be found on the Cato website at the following URL:

<https://www.cato.org/people/patrick-g-eddington>

The public has an urgent need for information about FBI surveillance of or related activities targeting the above mentioned information technology company. The recent Department of Justice multi-count indictment against Wikileaks founder Julian Assange explicitly references the use of encryption technologies by information gathering organizations like Wikileaks as a potential basis for a federal prosecution if federal government information is transmitted using such technologies. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

As a Cato scholar, I meet the statutory definition of a “representative of the news media” per *Cause of Action v. F.T.C.*, 799 F.3d 1108 (D.C. Cir. 2015) as Cato and its scholars (1) gather information of potential interest (2) to a segment of the public; (3) use editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to one or more audiences. **Accordingly, I ask for expedited processing on that basis.** I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance.

Sincerely,



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